price within ten days. The defendant having according to plaintiff failed to do so he had told him that the deal was off so that by June 9, 1965 there was no longer any agreement with the defendant to sell him the 26 houses. Therefore on his evidence alone his claim for specific performance of the alleged oral agreement of May 29, 1965 must fail. Accordingly I dismiss his claim."

I have no reason to doubt the correctness of his conclusion upon the evidence before him.

At the appeal, counsel for the appellant conceded that there was a mass of irrelevant evidence introduced and that the action properly should be one based on vendor-purchaser relationship. To that end, he was prepared to accept paragraph 12 of the Amended Defence and Counter-claim that the respondent agreed in about December 1966 to purchase the 26 houses. It seems clear to me that "the said terms" of the purchase mentioned in paragraph 12 were as those set out in paragraph 11(a) and (b) namely, the defendant: —

(a) should take over the purchase of the 26 houses from the original purchasers and

(b) pay to the plaintiff the sum of $455,000 which amount the plaintiff alleged was due to him as the balance of the purchase price after crediting all payments already made to the plaintiff.

Counsel further urged that the only issue is whether the unpaid balance had been paid by the respondent.

The respondent was unable to go ahead until he secured approval of Bank Bumiputra on his loan application sometime in November 1967. On January 9, 1968, an "undertaking" was executed which appears at pages 386-388 of the record. That undertaking was given by one Saraswathy Devi, an advocate and solicitor, for release of the 26 titles subject to certain conditions set out in paragraphs (a) to (g) and consented to by the respondent, one Seah Choon Chye, a lawyer with respondent's firm and the appellant. That undertaking confirmed the balance outstanding as $455,000 and on that date, after release of $350,000 to Skrine & Co., the respondent was still indebted in the sum of $105,000. It was respondent's contention that he questioned Miss Devi about omission of a clause to the effect that that sum was to be set off from the rents collected on the houses by appellant after January 9, 1968 but was told by Miss Devi and the appellant that that was understood.

The 26 houses were transferred to respondent and registered in his name on September 1, 1970 and he has collected the rents as from that date. Prior thereto on his own admission the appellant had been collecting the rents. It is the respondent's contention that calculated on the basis of $225 rental per mensem per house, even allowing for some being vacant, the balance sum of $73,271.26 outstanding as on May 13, 1968 would have been fully set-off by February 28, 1969. In terms of the undertaking, therefore, the appellant was accountable to him in the sum of $101,250 being rents from March 1, 1969 to August 31, 1970. Any interest payable to appellant in respect of the balance of the purchase price is more than off-set by the interest due to respondent in respect of rents collected by the appellant after February 28, 1969.

The appellant asks, however, that the case be remitted for the taking of accounts, as the figure of $225 rental per house was arbitrary. The only accounts produced in court at pages 646-655 of the record made no reference to rentals collected, on his own admission, by the appellant. His evidence is as follows: —

"I have been collecting rents on all 26 houses from the time they were built until August 30, 1970. I believe all 26 houses had been built by date of Undertaking. At first the Military paid $285 per month per house but later reduced it to $225.

I cannot say how much I had collected in rent up to August 30, 1970, so cannot say if I had collected $101,250."

On the question of entitlement to rents and profits, it is clear that the purchaser takes all the benefits by way of rents and profits and the vendor is only entitled to interest on balance unpaid. [See *In re Thackwray and Young's Contract,*[2] *Shaw* v. *Foster,*[3] *In re Lyne-Stephens and Scott-Miller's Contract*[4]]. Date of completion was January 9, 1968 when security for balance of $105,000 was taken by re-transfer of the 10 houses (see *Davies* v. *Litte-John;*[5] *Poh Kim Kang* v. *Ishak b. Lambik*[6]).

I am of the view, therefore, that it is futile to order a taking of accounts as the appellant obviously kept no accounts of the rents collected. I agree with the learned judge in allowing the counter-claim.

I would dismiss this appeal and confirm the order of the High Court.

Raja Azlan Shah F.J. concurred.

Appeal dismissed.

Solicitors: *Skrine & Co.; N. Ramachandran & Co.*

TEH CHENG POH v. PUBLIC PROSECUTOR

[A.Cr.J. (Arulanandom J.) March 12, 1976]

[Penang — Miscellaneous Criminal Application No. 4 of 1976]

Criminal Law and Procedure — Declaration — Essential (Security Cases) Regulations, 1975 — Subpoena — Federal Constitution.

Constitutional Law — Emergency — Emergency (Essential Powers) Ordinance, 1969 — Essential (Security Cases) Regulations, 1975 — Whether constitutional and valid.

This was an application by way of motion for the following orders: —

(1) The Honourable Court has no jurisdiction to try the applicant under the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 as the said regulations are purportedly made under section 2 of the Emergency (Essential Powers) Ordinance No. 1 of 1969 which is null and void and of no effect. The said regulations are accordingly void and inoperative;

(2) The Honourable Court cannot legally try the applicant until there is a preliminary enquiry before a Magistrate in accordance with the provisions of Chapter XVII of the Criminal Procedure Code (F.M.S. 6);

(3) Any further or other order deemed fit by Honourable Court.

The applicant had been charged in the Magistrate's Court, Penang —

(1) that he on January 13, 1976 at about 12.35 p.m. at the junction of Kampar Road and Ayer Itam Road, in the District of Georgetown, in the State of Penang, without lawful excuse did have in his possession a firearm, to wit, a home-made .38 Revolver, and thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960;

(2) that he on the same date, time and place, in the District of Georgetown, in the State of Penang, without lawful excuse did have in his possession ammunitions, to wit, 5 rounds of .38 Special Revolver bullets, and thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960.

He was committed under the provisions of Regulation 6 of the Essential (Security Cases) (Amendment) Regulations, 1975, to stand trial in the High Court in Penang.

Held: (1) any action seeking a declaration of this nature can only be commenced by way of writ;

(2) a subpoena can only be requested for purpose of trial of an action or an suit. It cannot be requested for purposes of raising a preliminary objection;

(3) the Emergency (Essential Powers) Ordinance No. 1 of 1969 has been promulgated under the provisions of Article 50(2) of the Federal Constitution and by reason of that the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 are not unconstitutional and not invalid.

Case referred to:-

(1) *N. Madhavan Nair* v. *Government of Malaysia* [1975] 2 M.L.J. 286.

CRIMINAL APPLICATION.

Karpal Singh for the applicant.

Ghazi bin Ishak (Deputy Public Prosecutor) for the respondent.

Arulanandom J.: This is an application by way of motion for the following orders: —

(1) The Honourable Court has no jurisdiction to try the applicant under the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 as the said regulations are purportedly made under section 2 of the Emergency (Essential Powers) Ordinance No. 1 of 1969 which is null and void and of no effect. The said regulations are accordingly void and inoperative;

(2) The Honourable Court cannot legally try the applicant until there is a preliminary enquiry before a Magistrate in accordance with the provisions of Chapter XVII of the Criminal Procedure Code (F.M.S. 6);

(3) Any further or other order deemed fit by Honourable Court.

The applicant in this case was charged on January 27, 1976, in the Magistrate's Court, Penang. The charges against him were as follows: —

"First Charge:

That you on the 13th day of January, 1976, at about 12.35 p.m., at the junction of Kampar Road and Ayer Itam Road, in the District of Georgetown, in the State of Penang, without lawful excuse did have in your possession a firearm, to wit, a home-made .38 Revolver, and thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960.

Second Charge:

That you on the same date, time and place, in the District of Georgetown, in the State of Penang, without lawful excuse did have in your possession ammunitions, to wit, 5 rounds of .38 Special Revolver bullets, and thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960."

He was committed under the provisions of regulation 6 of the Essential (Security Cases) (Amendment) Regulations, 1975, to stand trial in the High Court in Penang. The case was fixed for hearing on the 4th and 5th of March, 1976. On the 28th of February, 1976, the said notice of motion was filed and fixed for hearing on the same dates. The first question this court has to consider is whether the procedure adopted by the applicant is correct and proper. While it is ostensibly for the purpose of raising a preliminary objection to the jurisdiction of the High Court to try him on the said charges, it goes much further and seeks a declaration that the Emergency (Essential Powers) Ordinance No. 1 of 1969, is null and void and of no effect. So, the substantive point raised in this application is the declaration of the invalidity of the said Ordinance. It is abundantly clear that any action seeking a declaration of this nature can only be commenced by way of a writ. It cannot be commenced by a notice of motion. While the reason for proceeding in this manner may be transparent, however, it is not the duty of the court to probe into reasons and make any findings on that score, however unpalatable they may be. However, in the interests of justice and in order to allow the applicant full liberty to exercise his rights to defend himself, the court will, instead of striking out the motion for procedural defect, consider his application as a preliminary objection to jurisdiction of this court in Criminal Trial No. 1 of 1976. I will repeat again that this Miscellaneous Criminal Application is made as a completely separate motion No. 4 of 1976 while the Criminal Trial itself is numbered No. 1 of 1976.

The next question the court has to consider is whether the Registrar was correct in refusing to issue sub-poenae to the following persons: —

(1) Tan Sri Abdul Kadir bin Shamsuddin, Chief Secretary to the Government;

(2) Tunku Tan Sri Mohamed bin Tunku Besar Burhanuddin, Chief Secretary to the Government in 1969;

(3) Mr. Thor Beng Chong, Govt. Printer in 1969.

Counsel for applicant made a complaint about this refusal at the outset and requested the court to order the issue of subpoenae to those persons to attend the trial.

Earl *Jowitt's* Dictionary of English Law with which I presume everybody is familiar defines 'subpoena' as 'a writ or summons issued in an action or suit requiring the person to whom it is directed to be present at a specified place and time, and for a specified purpose under a penalty (subpoena) for non-attendance'.

So it is quite clear that subpoenae can only be requested for purposes of a trial of an action or a suit. They cannot be requested for purposes of raising a preliminary objection. To hold otherwise would be to open the court to complete abuses of its process; as for instance, a person who is applying for bail would, purely to embarrass the prosecution, ask for subpoenae to be issued to the Public Prosecutor, to the Investigating Officer, to the Chief Police Officer,

and the like. Further, in this matter the subpoenae were requested to be issued to persons who are not witnesses for the defence at the trial of the applicant on the charges preferred against him in Criminal Trial No. 1 of 1976. If they were being called to give evidence in court as to whether the applicant was in possession of the .38 revolver and the .38 Special Revolver bullets he would have undoubtedly been entitled to have them subpoenaed but in this case the subpoenae were requested for a completely different purpose and not for a purpose envisaged by the rules of court. The Registrar was therefore correct in refusing to issue the subpoenae and I affirm his decision that no subpoenae be issued to the said persons as their absence will not prejudice the applicant in the defence of the charges against him.

The next issue, and to my mind the main issue, which the applicant has raised in a devious manner before the court as a preliminary point is whether the Emergency (Essential Powers) Ordinance, No. 1 of 1969, is invalid or not. The second prayer in the Notice of Motion is purely consequential on the first, for, if the answer to the first question is that the Ordinance was invalid, then it will necessarily follow that this trial cannot go on. In support of the preliminary objection that the court has no jurisdiction, the applicant has filed an affidavit and relies on it. The basis of his argument that the Emergency (Essential Powers) Ordinance, 1969, is null and void and of no effect is that the Yang Dipertuan Agung has not assented to the said Ordinance and thus the Ordinance has not been properly or at all promulgated within the meaning of the provisions of Article 150(2) of the Federal Constitution and it has therefore not become the law of the land. Article 150(2) of the Constitution reads as follows: —

"(2) If a Proclamation of Emergency is issued when Parliament is not sitting, the Yang Dipertuan Agung shall summon Parliament as soon as may be practicable, and may, until both Houses of Parliament are sitting, promulgate ordinances having the force of law, if satisfied that immediate action is required."

Counsel for the applicant conceded that as far as the Proclamation of Emergency was concerned, there was no defect. In fact anybody who knew of the terror and turbulence, the violence and the bloodshed, the total threat to law and order in the country which erupted on May 13, 1969, would not have the temerity to argue that the Yang Dipertuan Agung had no reason to be of the opinion that public security in the Federation was seriously threatened by reason of action taken by a substantial body of persons to cause a substantial number of citizens to fear organised violence against persons and property. Also in his opinion the Yang Dipertuan Agung considered it to be necessary for the purpose of suppressing such organised violence to proclaim the areas in the Federation as security areas for the purpose of Part II of the Internal Security Act, 1960 and for that purpose the Yang Dipertuan Agung proclaimed all areas in the Federation to be security areas. A proclamation was issued on the 15th of May, 1969. Following on the proclamation the Ordinance 1 subject to attack now was promulgated. The Ordinance was published as P.U.(A) 146. After the necessary recitals it conferred upon the Yang Dipertuan Agung the power to make regulations known generally as the Essential Regulations. The Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975, were made under the powers conferred on the Yang Dipertuan Agung under section 2(1) of the Emergency (Essential Powers) Ordinance, 1969. This Ordinance is also dated May 15, 1969.

The applicant bases his whole argument that this Ordinance is null and void and of no effect on the grounds that the *Gazette* publication does not include the legend of the Yang Dipertuan Agung's signature and the words that it was promulgated. The most important thing which must be borne in mind is that the applicant bases his whole contention on the *Gazette* notification. It is to be further noted that in the *Gazette* notification the only defect the applicant relies on is the absence of the legend. If one looks at the preamble and also the opening words of the operative part of the Ordinance, it clearly states that this Ordinance is promulgated by command of the Yang Dipertuan Agung. The heading of the Ordinance reads as follows: —

"LAWS OF MALAYSIA
Ordinance 1
EMERGENCY (ESSENTIAL POWERS) ORDINANCE, 1969

An Ordinance promulgated by the Yang di-Pertuan Agong under Article 150(2) of the Federal Constitution.

[15th May, 1969.]

WHEREAS by reason of the existence of a grave emergency threatening the security of Malaysia, a Proclamation of Emergency has been issued by the Yang di-Pertuan Agong under Article 150 of the Constitution;

AND WHEREAS Parliament was dissolved on the Twentieth day of March, 1969, and elections to the new Dewan Ra'ayat have not been completed;

AND WHEREAS the Yang di-Pertuan Agong is satisfied that immediate action is required for securing public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community;

IT IS HEREBY ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong pursuant to Clause (2) of Article 150 of the Constitution as follows:

Short title and application.

1. This Ordinance may be cited as the Emergency (Essential Powers) Ordinance, 1969, and shall have application throughout Malaysia."

So, in fact, the whole *Gazette* publication of the promulgation is complete except for the absence of the legend. Now the *Gazette* publication is only a notice to the public of the laws in force and as far as the provisions of the law are concerned they are all contained in the *Gazette* Notification. When a question arises whether the Ordinance was duly promulgated by the Yang Dipertuan Agung or not, the Gazette publication P.U.(A) 146 has evidential value in that the Ordinance itself can be proved under section 78(1)(a)(iii) of the Evidence Act without the necessity of proving the original. But that is as far as it goes. It follows that, if the original is shown to be properly promulgated, any mistake or absence of words in the *Gazette* Notification cannot vitiate the original promulgation. Similarly a publication, by itself, cannot be proof of the original document if the original

document can be used to contradict it as in the case of libel. If a libellous matter is published purporting to be what is an original document and if it is proved the original document did not contain the libellous part of the publication the author of the original document cannot be held guilty of libel. Therefore the fact that the legend of the Yang Dipertuan Agung's signature and the fact of promulgation by the Yang Dipertuan Agung are missing from the *Gazette* do not conclusively mean that the Yang Dipertuan Agung has not promulgated the Ordinance.

It is also to be noted that on the same day another Ordinance, Emergency (Essential Powers) Ordinance, No. 3 of 1969, was promulgated, and this Ordinance specifically refers to the Emergency (Essential Powers) Ordinance No. 1 of 1969 and this Ordinance has the necessary legend. Falling back on the presumption of section 114(e) of the Evidence Act which allows the court to presume that judicial and official acts have been regularly performed, one can hardly imagine the Yang Dipertuan Agung assenting and promulgating an Ordinance part of which is based on a previous Ordinance if he had not assented to and promulgated the previous Ordinance. However, for the purpose of this case it is not necessary to rely on presumptions. In the matter before me, counsel for applicant and respondent referred to the affidavits of the late Prime Minister Tun Abdul Razak and the Chief Secretary to Government Tan Sri Abdul Kadir bin Shamsuddin which was filed in Originating Summons 400/75 in the High Court at Kuala Lumpur (*N. Madhavan Nair* v. *Government of Malaysia*[1]). With their consent the court agreed to include those affidavits in the record of this case, both for the purposes of argument and decision. That case raised the same question that is before me, that is, whether the Emergency (Essential Powers) Ordinance No. 1 of 1969 was valid or not. It was founded on the same grounds and relied on the same arguments. In the affidavit of Tun Abdul Razak filed in that case which has become part of the record paragraphs 9 and 10 clearly state as follows: —

"9. I refer to paragraph 12 of the Affidavit of N. Madhavan Nair and state that owing to the grave emergency threatening the security of the country during the 'May 13' incident, I personally presented the said Ordinance to His Majesty the Yang di-Pertuan Agong at Istana Negara for his consideration and approval. Having considered the said Ordinance and after being satisfied that immediate action was required for securing public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community His Majesty the Yang di-Pertuan Agong approved the promulgation of the said Ordinance. His Majesty the Yang di-Pertuan Agong signed the said Ordinance accordingly. Immediate arrangement was then made to print and publish the said Ordinance in the *Government Gazette.*

10. I am advised and verily believe that the said Ordinance being made by His Majesty the Yang di-Pertuan Agong in the exercise of the powers conferred by Article 150(2) of the Constitution is valid in law. I am further advised and verily believe that the Essential (Community Self-Reliance) Regulations, 1975 and the Essential (Security Cases) Regulations, 1975 being made by His Majesty the Yang di-Pertuan Agong in exercise of the powers conferred upon Him by section 2 of the said Ordinance are valid in law."

This affidavit was sworn to by the late Prime Minister on October 27, 1975.

Furthermore the second affidavit of Tan Sri Abdul Kadir bin Shamsuddin, Chief Secretary to the Government reads in paragraphs 5 and 6 as follows: —

"5. As the Chief Secretary to the Government of Malaysia I have control over all documents relating to the affairs of the Government of Malaysia.

6. I have caused a thorough search to be made for the original of the Emergency (Essential Powers) Ordinance No. 1 of 1969 and I have been advised and verily believe that the original of the said Ordinance is misplaced and could not be found."

According to this sworn statement by the Chief Secretary to the Government the original document cannot be found. If it can be found it may be that this application would never have come before this court. In the face of the late Tun Abdul Razak's affidavit and in view of the fact that the applicant is unable to say that he has seen the original document or that he has witnesses who have seen the original documents and that the original was not assented to by His Majesty, the court must accept the affidavit of the late Prime Minister. Similarly, on the affidavit of Tan Sri Abdul Kadir bin Shamsuddin, it is clear that the original document cannot be traced. Counsel for the applicant argued that it is the duty of the respondent to say how it was lost. This seems to require flights of fancy. In fact, if one knows where it was misplaced one could trace it. If one is asked for something six years after the event and cannot find it, it will be unrealistic to expect a person to say how it was lost. So taking the *Gazette* Notification P.U.(A) 146 and the affidavit of Tun Abdul Razak one could make the following conclusions: —

(1) that the original document was in existence;

(2) that it was promulgated by the Yang Dipertuan Agung;

(3) that it is no longer in the custody of the respondent.

The court is satisfied on the affidavit of Tan Sri Abdul Kadir bin Shamsuddin that there was or is a reason for non-production of the original at the hearing at this stage. Furthermore *gazette* publications are not made from the original by mechanical processes which in themselves ensure the accuracy of the copy and this cannot be conclusive proof that in view of all the circumstances of the case the Yang Dipertuan Agung did not assent to or promulgate the Ordinance. As I said earlier, the last question posed before the court is on all fours with the question posed in *N. Madhavan Nair* v. *Government of Malaysia.* The learned judge in that case has taken great pains to consider and discuss all the relative aspects of the law and the questions raised. I entirely agree with both his ratio and his conclusions and it would be superfluous for me to repeat and to re-cite all the arguments with the authorities all over again. He has also commented on the mood and temper prevailing at the relevant date, i.e., 15th of May, 1969. In that context where emergency laws were not only necessary but required speed in enactment and publication, the probability of the Printer omitting to include the legend cannot be disregarded. The probability is very high indeed. Not only the security of the nation but the existence of

the nation was being threatened. Therefore, the preliminary objection to the jurisdiction of this court is overruled and I hold that the Emergency (Essential Powers) Ordinance No. 1 of 1969 has been promulgated under the provisions of Article 150(2) of the Federal Constitution and by reason of that the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 are not unconstitutional and not invalid.

The applicant's trial under the said regulations is constitutional and lawful.

The preliminary objection is therefore dismissed.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

LEMBAGA AMANAH SEKOLAH SEMANGAT MALAYSIA v. COLLECTOR OF LAND REVENUE, DINDINGS

[O.C.J. (Hashim Yeop A. Sani J.) June 22, 1976]
[Ipoh — Land Reference No. 1 of 1975]

Land Acquisition — Objection to award — Hearing and procedure — Burden of proof — Principle of reinstatement — Market value — Principles of valuation — Land Acquisition Act 1960, s. 37(1)(b).

This was an objection under section 37(1)(b) of the Land Acquisition Act, 1960 against the award of the Collector in respect of land covering an area of 6 acres 3 roods 32 poles, belonging to the applicant, on which were also found the main building of the Outward Bound School, Wardens Bungalow, Instructors Quarters, Store and Workshop, and Storage and Supply Installations belonging to the Outward Bound Trust of Malaysia, the applicant. The land was compulsorily acquired for the proposed site of the Royal Malaysian Navy Military Base. It was not disputed that the provisions of section 4 and section 8 of the Act have been complied with and that an inquiry was held by the Collector under section 12 of the Act following the service of the notices required under sections 10 and 11 of the Act. It was argued for the applicant that the principle of reinstatement should be applied.

Held: (1) the Land Acquisition Act makes clear that the basis for determining adequacy of compensation is the market value and other factors set out in paragraph 2 of the First Schedule;

(2) the Land Acquisition Act has adopted the valuation method prescribed in paragraph 2 of the Schedule with the express direction that *no other consideration* should be taken into account in arriving at an award;

(3) the legislative scheme of the Land Acquisition Act did not admit of the consideration of the reinstatement principle in the assessment of compensation.

Cases referred to:-

(1) *Assistant Development Officer, Bombay* v. *Tayaballi Allibhoy Bohori* A.I.R. 1933 Bomb. 361, 364.

(2) *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur* [1967] 2 M.L.J. 99.

(3) *Wan Mohamed* v. *Collector of Land Revenue, Kota Bharu* [1968] 2 M.L.J. 64.

(4) *Collector of Land Revenue* v. *Alagappa Chettiar* [1971] 1 M.L.J. 43.

(5) *Vyricheria Narayana Gajapatiraju Bahadur Garu* v. *Revenue Divisional Officer, Vizagapatam* 181 Ind. Cas. 230 P.C.

(6) *A and B Taxis, Ltd.* v. *The Secretary of State for Air* [1922] 2 K.B. 328 at p. 336.

(7) *Baroda Prasad Dey, Chairman, Serampur Municipality* v. *Secretary of State* (1921) I.L.R. 40 Cal. 83; 25 C.W.N. 677.

(8) *State of Gujarat* v. *Vakhatsinghi* A.I.R. 1968 S.C. 1481.

(9) *Province of West Bengal* v. *Raja of Jhargram* A.I.R. 1955 C. 392.

(10) *West Bengal* v. *Subodh Gopal* [1954] S.C.R. 587; A.I.R. 1954 S.C. 92.

(11) *Dwarkadas Srinivas* v. *Sholapur Spinning Co.* [1954] S.C.R. 674; A.I.R. [1954] S.C.

(12) *State of West Bengal* v. *Mrs. Bela Banerji* [1954] S.C.R. 558; A.I.R. 1954 S.C. 170.

(13) *Vacher & Sons, Ltd.* v. *London Society of Compositors* [1913] A.C. 107, 113.

(14) *Grey* v. *Pearson* (1857) 6 H.L.C. 61, at p. 106.

(15) *Sussex Peerage Case* (1844) 11 Cl. & F. 85, at p. 143.

(16) *Magor and St. Mellons Rural District Council* v. *Newport Corporation* [1952] A.C. 189 at p. 191.

(17) *Seaford Court Estates Ltd.* v. *Asher* [1949] 2 K.B. 481.

(18) *Island Peninsular Development Bhd.* v. *Collector of Land Revenue, Penang* Penang — Land Reference No. 15 of 1973 (unreported).

LAND REFERENCE.

S.D.K. Peddie for the applicant.

Mohamed Eusoff bin Chin (Legal Adviser, Perak) for the respondent.

Hashim Yeop A. Sani J.: This is an objection under section 37(1)(b) of the Land Acquisition Act, 1960 against the award of the Collector of Land Revenue, Dindings, in respect of land in EMR 779, Lot No. 1657, in the Mukim of Lumut, in the District of Dindings, covering an area of 6 acres 3 roods 32 poles, belonging to the applicant, on which are also found the main building of the Outward Bound School, Wardens Bungalow, Instructors Quarters, Store and Workshop, and Storage and Supply Installations belonging to the Outward Bound Trust of Malaysia, the applicant. The land was compulsorily acquired for the proposed site of the Royal Malaysian Navy Military Base. It is not disputed that the provisions of section 4 and section 8 of the Act have been complied with and that an inquiry was held by the Collector under section 12 of the Act following the service of the notices required under sections 10 and 11 of the Act.

In Form O which was referred to the court by the Collector under section 38(5) of the Act, it is stated that the amount of compensation awarded under section 14 is $211,257 and the grounds on which the amount of compensation was determined are set out in the said form after considering the advice of the Director of Valuation, Perak.

In a proceeding of this nature the position of the parties has been well-settled. Since the applicant is dissatisfied with the amount of compensation awarded the onus is on the applicant to show that the award of the Collector was inadequate as stated by Broomfield J. in *Assistant Development Officer, Bombay* v. *Tayaballi Allibhoy Bohori*[1]: —

"The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing *prima facie* that the award is inadequate, then Government must support the award by producing evidence."